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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,570	08/14/2000	Roger William Gutwein	7721M	9947

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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08/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/638,570

Applicant(s)

GUTWEIN ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112 1st paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 55-81 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, it is not clear that the original specification provides support for a filtered extract brew solids that varies less than 40% of the average filtered extract brew solids level as called for in instant claim 80. Although Applicant cites Examples 8-10 as supporting new claim 80, this limitation is not found in said examples.

Additionally, the original specification does not appear to support claim 81. Although Applicant cites Example 9 as supporting new claim 81, there is not apparent support for delaying the filtering of a second extract by at least 30 minutes. Although there is support for delaying a second extraction to 20.5 hours in Example 9, there is no support for the much wider range now being claimed.

In claims 55, 80, and 81, the recitation of "diluting a portion" of extract is not supported by the original specification. In particular, the original specification does filter separate portions of extract, but the dilution and subsequent dispensing appear to relate

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to each filtered portion as a whole. In other words, if a first extract of 100 ml is obtained through filtering, this 100 ml is diluted as a whole with so many parts of water. There is no support for partitioning what has already been extracted into different portions and diluting only one of those portions.

This is a new matter rejection.

Claim Rejections - 35 USC § 112 2nd paragraph

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 55-81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 55 (step d) and 80 (step e), it is not clear if the first filtered extract is dispensed after diluting or whether the dispensing step refers to dispensing of a portion of filtered extract that has not been diluted.

In claim 80, "the average filtered extract brew solids level" lacks antecedent basis.

In claim 81, "the last portion" lacks antecedent basis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 55, 56, 58, 61-64, 67-70, and 73-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson taken together with Anson (U.S. Patent No. 5584229) and any one of Coleman, GB 2111377, and Sullivan.

Levinson discloses a process for brewing coffee comprising preparing an extract of coffee in a brewing chamber (from coffee bean) wherein same is then microwave heated and additionally brewed for a further time wherein same is then filtered of grounds and dispensed for consumption (e.g. col. 9, lines 43-53; Figures). Levinson is silent regarding the time said brewed coffee is microwave heated and held for longer brewing. However, it is notoriously well known to hold coffee grounds in contact with extract/water for longer time periods to achieve a brew that is even stronger. For example, Coleman et al teaches the concept of time of contact of water with ground coffee beans as being depending on the desired strength and flavor of the finished brew (e.g. col. 1, lines 4-10). Sullivan discloses increasing the time for coffee ground and water contact will increase the strength of the brew (e.g. col. 4, lines 30-37). The relationship of increasing brew times to effect increase coffee strength is further described in GB 2111377 (paragraph 80). As for the particular time to hold said coffee grounds and water in contact as set forth in the instant claims or degree of brew solids attained due to extraction time (e.g. instant claim 80), such determination would have been well within the purview of a skilled artisan, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have determined the time grounds are held with the extract as a matter of preference depending on, for example,

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the coffee strength desired and to have arrived at the particular time required for result through routine experimental optimization.

The claims further call for the particular amount of water, coffee, ratio of water and coffee employed and the amount of coffee beverage dispensed. Levinson is silent regarding the amounts of water and coffee in conjunction with a brewed coffee storage time. Nevertheless, such determinations would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amounts as a matter of preference depending on, for example, the strength of coffee taste desired or the consumer appetite (with respect to amount of beverage dispensed) or the availability of either the coffee or water in dictating final beverage amount or coffee/water ratio.

Levinson is silent regarding the storage temperature. Nevertheless, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have employed the temperatures as claimed as a matter of preference depending on the particular desired temperature of the coffee to be consumed, for example.

Claims 78 and 79 call for the particular type of coffee employed. Although Levinson is silent regarding same, all of the claimed coffee types are notoriously well known, and it would have been further obvious to have arrived at using any one of same as a matter of preference depending on the taste desired, availability, or cost involved.

Levinson is silent regarding diluting the coffee extract after filtering but before

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dispensing. However, it is well known to dilute brewed coffee as a means, for example, to adjust the temperature of the dispensed product to a desired temperature as taught, for example, by Anson (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the process of Jefferson, Jr. et al to include the dilution step so as to control the temperature of dispensed coffee beverage to a desired amount.

The claims further call for the particular amount of water to coffee extract employed in the dilution step. However, such determination would have been well within the purview of a skilled artisan, and, it would have been further obvious to have arrived at such ratio as a matter of preference depending on, for example, the strength of prepared coffee beverage desired.

Regarding the filtration of a first and second extract, it should be noted that Levinson creates coffee in a carafe or container that certainly holds more than one cup of coffee. As such, it is expected that the coffee extract will be poured in more than one portion in filling coffee cups for consumption (and dilution whether that be with water, milk, or some other liquid). Because the lid portion of the container in Levinson has a filter, each portion dispensed is filtered. Nevertheless, if it is shown that this is neither disclosed nor suggested in Levinson, it is notoriously well known to dispense coffee in portions from a carafe or similar container into individual cups. It would have been further obvious to have incorporated such step into the process of Levinson as a matter of preference of what is conventionally practiced with coffee dispensed from the same or similar containers.

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7. Claims 55, 56, 58-64, 67-70, and 73-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson taken together with Cheng et al and any one of Coleman, GB 2111377, and Sullivan.

Levinson discloses a process for brewing coffee comprising preparing an extract of coffee in a brewing chamber (from coffee bean) wherein same is then microwave heated and additionally brewed for a further time wherein same is then filtered of grounds and dispensed for consumption (e.g. col. 9, lines 43-53; Figures). Levinson is silent regarding the time said brewed coffee is microwave heated and held for longer brewing. However, it is notoriously well known to hold coffee grounds in contact with extract/water for longer time periods to achieve a brew that is even stronger. For example, Coleman et al teaches the concept of time of contact of water with ground coffee beans as being depending on the desired strength and flavor of the finished brew (e.g. col. 1, lines 4-10). Sullivan discloses increasing the time for coffee ground and water contact will increase the strength of the brew (e.g. col. 4, lines 30-37). The relationship of increasing brew times to effect increase coffee strength is further described in GB 2111377 (paragraph 80). As for the particular time to hold said coffee grounds and water in contact as set forth in the instant claims or degree of brew solids attained due to extraction time (e.g. instant claim 80), such determination would have been well within the purview of a skilled artisan, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have determined the time grounds are held with the extract as a matter of preference depending on, for example,

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the coffee strength desired and to have arrived at the particular time required for result through routine experimental optimization.

The claims further call for the particular amount of water, coffee, ratio of water and coffee employed and the amount of coffee beverage dispensed. Levinson is silent regarding the amounts of water and coffee in conjunction with a brewed coffee storage time. Nevertheless, such determinations would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amounts as a matter of preference depending on, for example, the strength of coffee taste desired or the consumer appetite (with respect to amount of beverage dispensed) or the availability of either the coffee or water in dictating final beverage amount or coffee/water ratio.

Levinson is silent regarding the storage temperature. Nevertheless, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have employed the temperatures as claimed as a matter of preference depending on the particular desired temperature of the coffee to be consumed, for example.

Claims 78 and 79 call for the particular type of coffee employed. Although Levinson is silent regarding same, all of the claimed coffee types are notoriously well known, and it would have been further obvious to have arrived at using any one of same as a matter of preference depending on the taste desired, availability, or cost involved.

Levinson is silent regarding diluting the coffee extract after filtering but before

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dispensing. However, it is well known to dilute brewed coffee which has been concentrated and stored after a time period of, for example, up to six months as taught, for example, by Cheng et al (see Examples). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such dilution of the coffee extract at some later point to provide for added consumer convenience.

The claims further call for the particular amount of water to coffee extract employed in the dilution step. However, such determination would have been well within the purview of a skilled artisan, and, it would have been further obvious to have arrived at such ratio as a matter of preference depending on, for example, the strength of prepared coffee beverage desired.

The claims further call for diluting the extract about 5 minutes to about 48 hours after filtering but before dispensing. Although Cheng et al teaches packaging a brewed coffee concentrate for up to a large period of time, there is no specific recitation of opening the package and diluting/serving same in a time of 5 minutes to 48 hours. Nevertheless, once packaged, it would have been further obvious to have opened same for dilution and dispensing at any time period within the shelf-life of same, including at, for example, 48 hours, as a matter of preference.

Regarding the filtration of a first and second extract, it should be noted that Levinson creates coffee in a carafe or container that certainly holds more than one cup of coffee. As such, it is expected that the coffee extract will be poured in more than one portion in filling coffee cups for consumption (and dilution whether that be with water, milk, or some other liquid). Because the lid portion of the container in Levinson has a

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filter, each portion dispensed is filtered. Nevertheless, if it is shown that this is neither disclosed nor suggested in Levinson, it is notoriously well known to dispense coffee in portions from a carafe or similar container into individual cups. It would have been further obvious to have incorporated such step into the process of Levinson as a matter of preference of what is conventionally practiced with coffee dispensed from the same or similar containers.

8. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson taken together with Kino et al and either one of Anson (U.S. Patent No. 5584229) or Cheng et al and further in view of any one of GB 2111377, Coleman and Sullivan.

The claims further call for the coffee extract to be stored in contact with the grounds sealed from oxygen. It is well known to brew coffee in oxygen-free environments as taught, for example, by Kino et al (see claim 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have prepared the coffee in Levinson (as modified) in an oxygen-free environment to provide a fresher tasting coffee without the ill-effects inherent from the presence of oxygen.

9. Claims 65, 66, 71, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson taken together with Borland et al and either one of Anson (U.S. Patent No. 5584229) or Cheng et al and further in view of any one of GB 2111377, Coleman and Sullivan wherein (a) or (b) is further taken together with Borland et al.

The claims further call for the particular amount of brew solids in the coffee extract. Borland et al teaches a ready-to-serve coffee beverages may have coffee

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solids concentration of, for example, 2.2% (col. 1, lines 36-43) and conventional ready-to-serve coffee beverages having coffee solids of, for example, 1% (col. 2, line 11). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed a coffee solids content of 1% as a preferred conventional amount (as called for in claims 71 and 72). However, pertaining to claims 65 and 66, it would have been further obvious to have employed a coffee solids amount of, for example, 2.2% using the process of Borland et al to attain a more intense coffee beverage without harsh and bitter notes.

Response to Amendment

10. Applicant's arguments filed 6/12/07 have been fully considered but they are not persuasive. All arguments have been addressed in view of the rejections as modified above.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

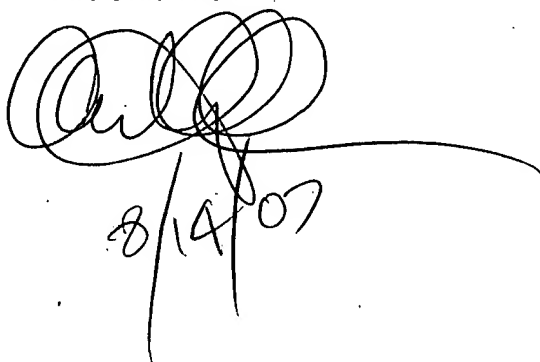
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
August 14, 2007



8/14/07